

Legislative Update

Summary: This report includes descriptions of AB 2092 (Huffman) and SB 1450 (Simitian) and a list of other legislation of interest to the Council.

2092 (Huffman)

PURPOSE OF THE BILL

AB 2092 would specifically require the Council to develop a long-term finance plan.

DESCRIPTION

This bill would require the Council to develop, by January 1, 2013, a long-term financing plan to pay the costs of implementing the Delta Plan including all projects, programs, and administrative costs identified in the plan. The plan would include various required elements:

- 1) Annual expenditure plans for five years of implementation of the Delta Plan.
- 2) An estimate of existing state and federal funds reasonably expected to be available for covering costs identified in the plan.
- 3) An evaluation of existing CALFED programs to determine if funding for those programs could be redirected to the Delta Plan.
- 4) A definition of public and private benefits.
- 5) An analysis and description of the basis for allocating program and project costs among private and public interests.
- 6) A set of protocols to ensure that revenues would be expended as intended and not diverted for other purposes.

The finance plan would identify and evaluate, under the beneficiary pays principle, the benefits to all groups and negative impacts caused by those groups resulting from implementation of the plan including the public, water users and diverters, dischargers into the Delta, and recreational users.

The finance plan would allocate program costs to public and private interests proportionate to the benefits received or the negative impacts caused according to a beneficiary pays principle. Private benefits associated with Delta Plan implementation

would be paid for with fee revenues, contractual payments, and cost-share agreements. Prior to assessing any fee, the Council would be required to obtain statutory authorization.

In addition, the Council would be permitted to seek early funding from groups that benefit from the Delta Plan. Any early funding received by the Council would be designated as a credit to these groups against any future fee or funding requirements.

Comments: Under current and proposed expenditure levels, the Council has about 12 months of funding for operations and planning. Given the state of the General Fund and the nature of the Council mission, some kind of fee authority is probably essential to its future success. Because fee collections would presumably be ongoing throughout any fiscal year, the bill should be amended to provide for continuous appropriation of fee revenues.

PREVIOUS LEGISLATIVE HISTORY

SB 12 (Simitian) 2009, would have established the Delta Ecosystem and Water Council and authorized it to impose a per acre-foot fee on water diversions within the Delta and on water conveyed through or around the Delta. The fee revenue would be used to support programs of the council, the Delta Protection Commission, the Department of Fish and Game, the Department of Water Resources, and the State Water Resources Control Board. The bill was placed on the Senate inactive file.

SB 113 (Machado) 2005, would have required the California Bay-Delta Authority, in undertaking the review, approval or modification of annual program plans and expenditures, to consider the extent to which those plans or expenditures are consistent with the beneficiary pays principle. Held in Assembly Water, Parks and Wildlife Committee.

SB 1450 (Simitian)

PURPOSE OF THE BILL

This bill is intended to provide a streamlined contracting process to help meet the timeline for developing the Delta Plan.

DESCRIPTION

This bill would allow the Council to contract for consultant services and architectural and engineering services for the following purposes:

- 1) To prepare the Delta Plan and the associated environmental review.

- 2) To meet the statutory responsibilities of the Council and the Independent Science Board with respect to the Bay Delta Conservation Plan (BDCP).
- 3) To make consistency determinations for state and local public agency actions with the Delta Plan.
- 4) To perform scientific reviews to inform water and environmental decision making.

This bill also includes exemptions from various state contracting and reporting statutes governing personal services and consultant contracts:

- 1) Architectural, engineering, and environmental services: the exemption would allow the Council to establish contract procedures with private firms without writing regulations subject to Office of Administrative Law (OAL) review.
- 2) Personal services contracting requirement: the exemption would allow the Council to hire non-state personnel to provide highly specialized or highly technical services not available within civil service.
- 3) State Contract Act exemption: the exemption would allow the Council to contract for consultant services without Department of General Services review and approval.

Notwithstanding these exemptions, the Council would be required to establish procedures for contracting for services in lieu of adopting formal regulations that would have to be reviewed and approved by the OAL under the Administrative Procedures Act.

Comments: Although the Council has already hired consultants to prepare the Delta Plan, and also retained independent BDCP consultant, the authorization pursuant to this legislation makes it much more likely that the Council can meet its statutory duties in a timely fashion. Additional assistance with the current budget limits may be needed prior to completion of the Delta Plan by January 1, 2012, and may also be needed whenever the BDCP process is completed, and a potential appeal to the Council has been filed contesting a determination by the Department of Fish and Game.

LEGISLATIVE HISTORY

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List of Attachments

Attachment 1 – Other Bills of Interest

Contact

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